

JUDGE SAND

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'09 CIV 1829

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PENGUIN GROUP (USA) INC. and PETER J.
D'ADAMO,

Plaintiffs,

No. _____

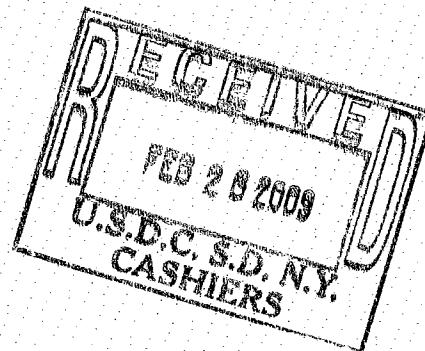
-against-

: ECF CASE

KNOWLEDGE HOUSE PUBLISHERS, INC. and
CASS INGRAM,

Defendants.

-----x



COMPLAINT

Plaintiffs Penguin Group (USA) Inc. and Peter J. D'Adamo, by their attorneys Cowan, Liebowitz & Latman, P.C., for their complaint against defendants Knowledge House Publishers, Inc. and Cass Ingram, allege as follows:

NATURE OF THE ACTION

1. This is a civil action for (a) trademark infringement arising under Section 32(1) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.*; (b) use of a false designation of origin in commerce, arising under Section 43(a) of the Lanham Act of 1946, as amended, 15

U.S.C. § 1125(a); (c) trademark dilution arising under Section 43(c) of the Lanham Act of 1946, as amended, 15 U.S.C. §1125(c); and (d) unfair competition under the common law of the State of New York.

JURISDICTION AND VENUE

2. This court has original jurisdiction over the claims arising under the Lanham Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This court has supplemental jurisdiction over the claims arising under the law of the State of New York pursuant to 28 U.S.C. § 1337.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c).

PARTIES

4. Plaintiff Penguin Group (USA) Inc. (“Penguin”) is a Delaware corporation having its principal place of business in the City and County of New York.

5. Plaintiff Dr. Peter J. D’Adamo (“Dr. D’Adamo”) is a citizen of the state of Connecticut, with a principal place of business in Wilton, Connecticut.

6. Upon information and belief, defendant Knowledge House Publishers, Inc. is an Illinois corporation having a principal place of business located at 105 Townline Road #116, Vernon Hills, IL 60064.

7. Upon information and belief, defendant Cass Ingram is a citizen of the state of Illinois.

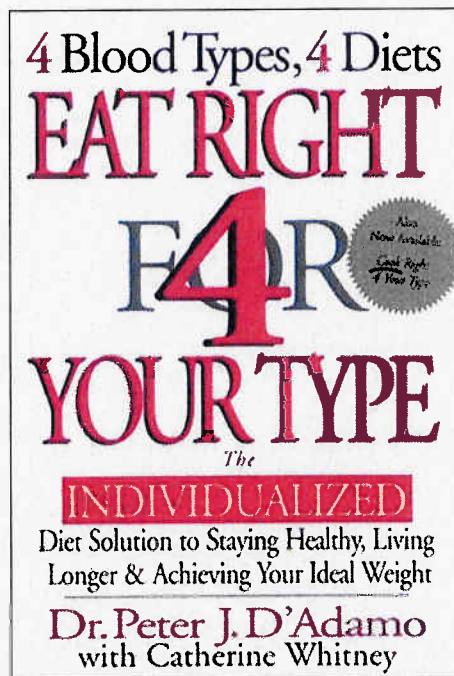
FACTS

The EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE Trademarks

8. Dr. D'Adamo is an eminent naturopathic physician and researcher with a wide international following. His first book, EAT RIGHT 4 YOUR TYPE, was a bestseller and has been translated into numerous languages worldwide. Dr. D'Adamo was selected 1990 Physician of the Year by the American Association of Naturopathic Physicians for his work on blood type and nutrition. He is the founder and editor emeritus of *The Journal of Naturopathic Medicine*.

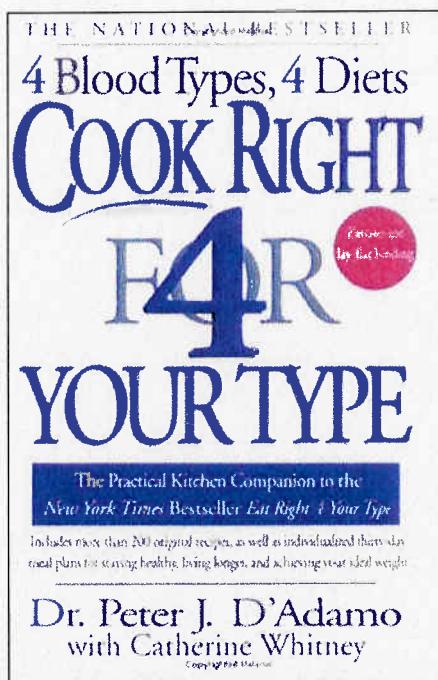
9. The EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks originated with Dr. D'Adamo, and have been used in connection with various alternative medicine, nutrition- and health-related products conspicuously bearing the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE mark on packaging and labeling.

10. Dr. D'Adamo's first book, EAT RIGHT 4 YOUR TYPE, was published in 1996 by Penguin's Putnam imprint:

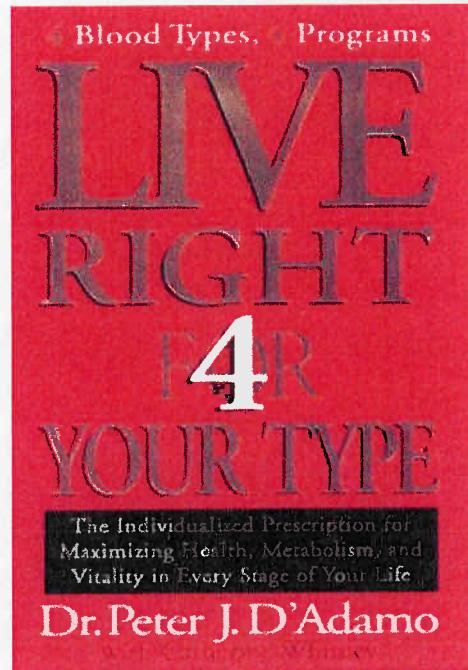


11. EAT RIGHT 4 YOUR TYPE became a New York Times bestseller and brought worldwide recognition to Dr. D'Adamo's blood-type theories. NutriBooks named EAT RIGHT 4 YOUR TYPE one of the ten most influential books ever written, and in 1999 respected industry analysts named EAT RIGHT 4 YOUR TYPE "One of the Ten Most Influential Health Books of the Century," and Dr. D'Adamo the "Most Intriguing Health Author of 1999."

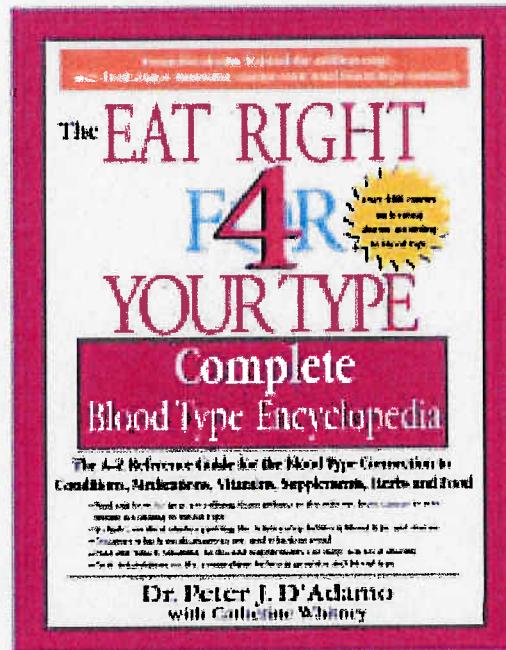
12. Dr. D'Adamo's next book, COOK RIGHT 4 YOUR TYPE, "The Practical Kitchen Companion to the *New York Times* Bestseller *Eat Right for Your Type*," was published by Penguin's Putnam imprint on December 28, 1999:



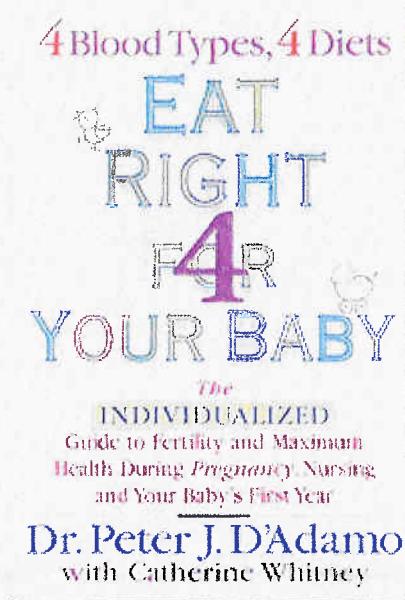
13. The next book in the series, LIVE RIGHT 4 YOUR TYPE, was published on December 28, 2000, also by Penguin's Putnam imprint:



14. The EAT RIGHT 4 YOUR TYPE, COOK RIGHT 4 YOUR TYPE, and LIVE RIGHT 4 YOUR TYPE volumes have been translated into numerous languages worldwide.
15. The EAT RIGHT 4 YOUR TYPE Complete Blood Type Encyclopedia, published under Penguin's Riverhead imprint in January 2002, is "The A-Z Reference Guide for the Blood Type Connection to Symptoms, Disease, Conditions, Vitamins, Supplements, Herbs and Food":

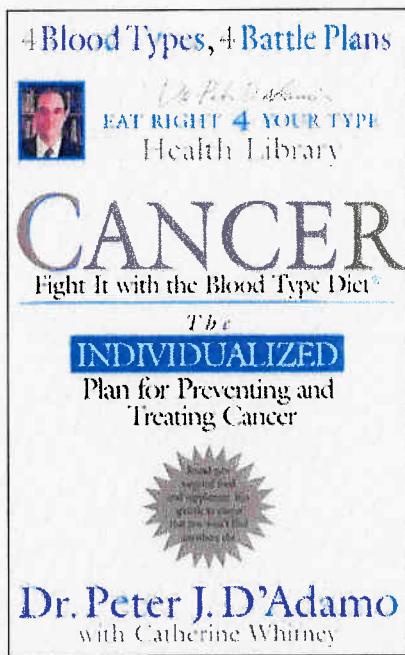


16. Dr. D'Adamo's EAT RIGHT 4 YOUR BABY, "The Individualized Guide to Fertility and Maximum Health During Pregnancy, Nursing and Your Baby's First Year," was first published in March 2003 under Penguin's Putnam imprint:

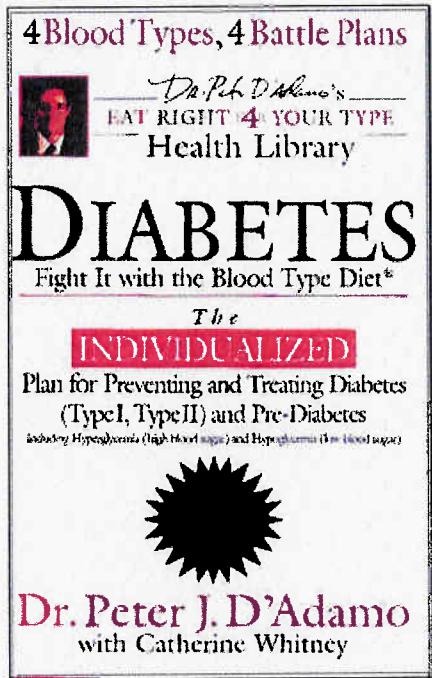


17. Plaintiffs' EAT RIGHT 4 YOUR TYPE Health Library series comprises eight volumes published between 2004 and 2005, covering

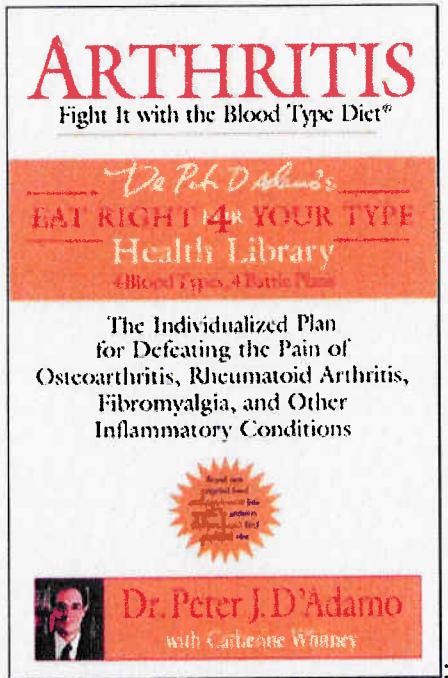
(a) Cancer (Putnam 2004):



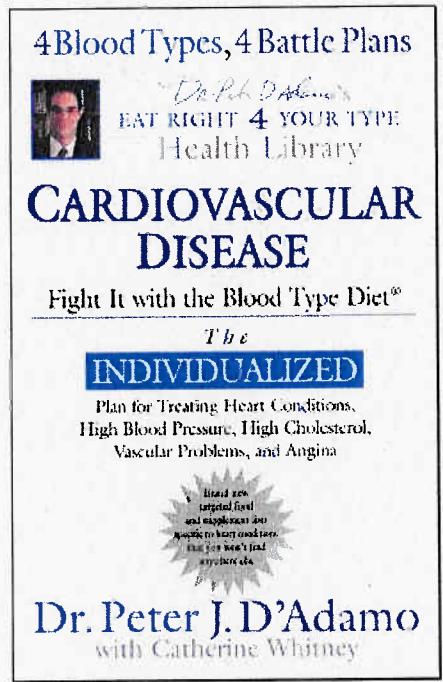
(b) Diabetes (Putnam 2004):



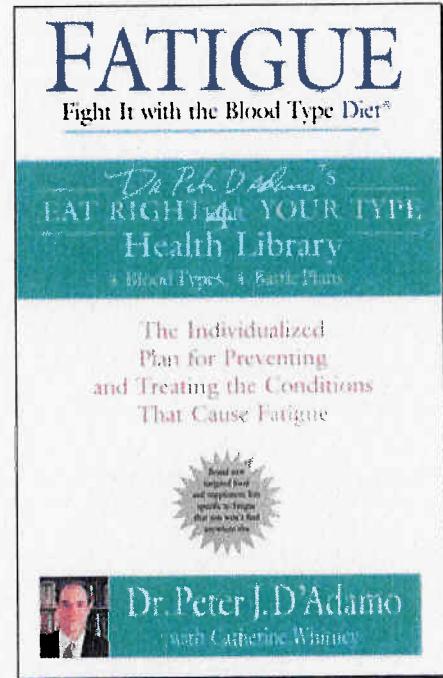
(c) Arthritis (Putnam 2004):



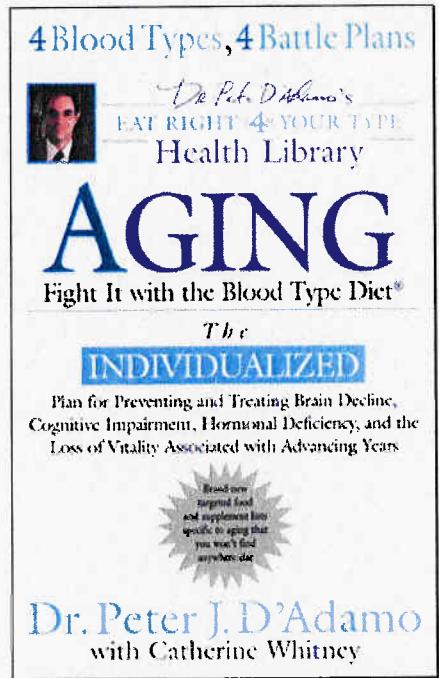
(d) Cardiovascular Disease (G. P. Putnam's Sons 2004):



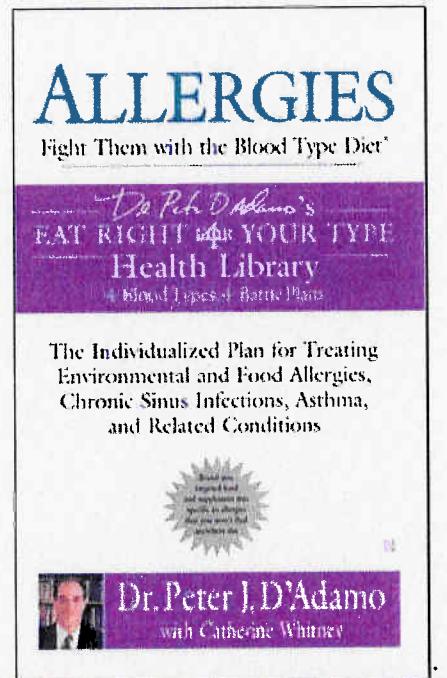
(e) Fatigue (Putnam 2005):



(f) Aging (G.P. Putnam's Sons 2005):

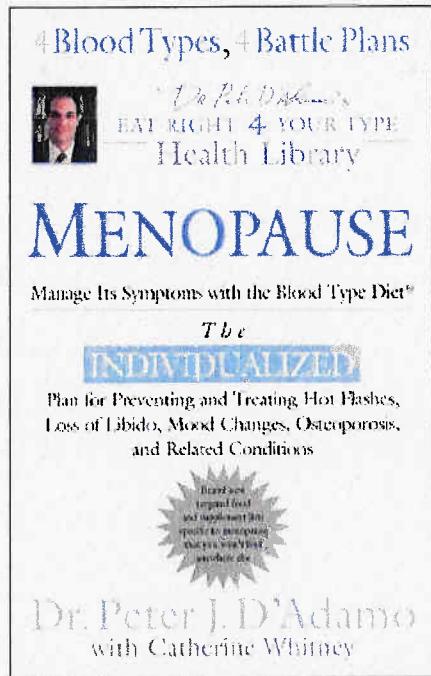


(g) Allergies (Putnam 2005):



; and

(h) Menopause (Putnam 2005):



18. The EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks have also been used to designate a variety of goods, including supplements, probiotics and herbal teas, as well as retail services associated with alternative medicine.

19. The EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks have been commercially successful, generating significant wholesale and retail sales of EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE branded merchandise in the United States.

20. Significant monies are spent each year in advertising the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE brand through various media. Dr. D'Adamo also maintains Internet websites located at www.dadamo.com, www.4yourtype.com, and www.genotypediet.com, through which the brand is further advertised.

21. This extensive advertisement and promotion of the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks, coupled with the marks' commercial success since 1996,

have resulted in the marks' acquiring tremendous goodwill and secondary meaning among the consuming public.

22. Plaintiff Dr. D'Adamo owns multiple U.S. federal trademark registrations for EAT RIGHT 4 YOUR TYPE or variants thereof, including:

MARK	REGISTRA-TION NO.	GOODS/SERVICES
EAT RIGHT 4 YOUR TYPE	2389801	BOOKS, NAMELY, HEALTH, NUTRITION AND DIET BOOKS; PAMPHLETS, NAMELY, HEALTH, NUTRITION AND DIET PAMPHLETS; CARDS, NAMELY, PRINTED CARDS CONTAINING MENU GUIDES in Class 16
4 FOR YOUR TYPE (stylized): 	2473875	NUTRITIONAL SUPPLEMENTS, VITAMINS AND MINERALS in Class 5
D'ADAMO 4 YOUR TYPE	2663668	VITAMINS, NUTRITIONAL SUPPLEMENTS, HERBAL BLENDS AND PROBIOTICS in Class 5

These registrations are valid, subsisting and in full force and effect. Registrations Nos. 2389801 and 2473875 have become incontestable. Copies of these registrations are annexed as Exhibit A.

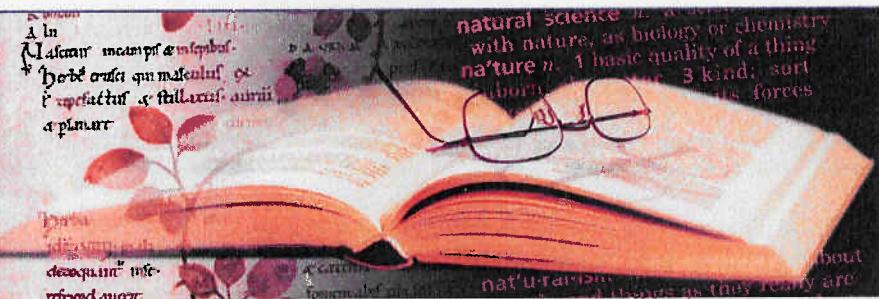
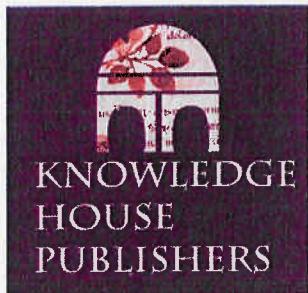
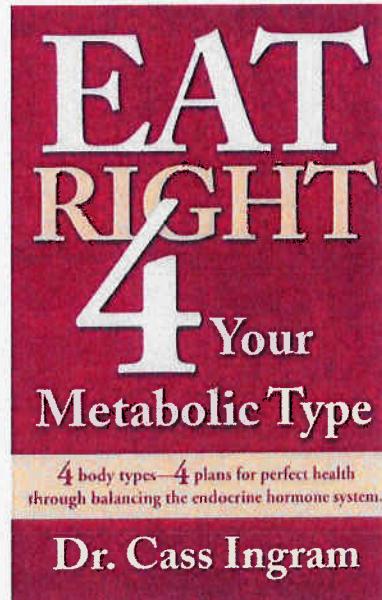
23. Dr. D'Adamo owns U.S. federal trademark applications for RIGHT 4 YOUR TYPE:

MARK	APPLICATION NO.	GOODS/SERVICES
RIGHT FOR YOUR TYPE	77523217	MAIL ORDER CATALOG SERVICES FEATURING NUTRITIONAL SUPPLEMENTS, VITAMIN SUPPLEMENTS, MINERAL SUPPLEMENTS, PROTEIN BLENDS, TEAS, AND FOOD BARS; AND BOOKS, WALLET CARDS, PRERECORDED CDS, PRERECORDED DVDS; SKIN CREAMS; AND BLOOD TYPING KITS; ON-LINE RETAIL STORE SERVICES FEATURING NUTRITIONAL SUPPLEMENTS, VITAMIN SUPPLEMENTS, MINERAL SUPPLEMENTS, PROTEIN BLENDS, TEAS, AND FOOD BARS; AND BOOKS, WALLET CARDS, PRERECORDED CDS, PRERECORDED DVDS; SKIN CREAMS; AND BLOOD TYPING KITS in Class 35
RIGHT 4 YOUR TYPE	78705321	NUTRITIONAL SUPPLEMENTS, VITAMINS AND MINERAL SUPPLEMENTS in Class 5; HERBAL TEAS in Class 30

24. Penguin is the exclusive licensee of the EAT RIGHT 4 YOUR TYPE trademark for books.

Defendants' Infringement of the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE Marks

25. Upon information and belief, Defendants have recently begun selling, marketing or otherwise distributing a book with the title EAT RIGHT 4 YOUR METABOLIC TYPE by Dr. Cass Ingram:



New releases & forthcoming titles

new titles

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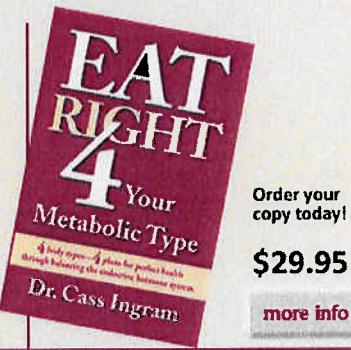
[contact information](#)

JUST IN!!!

Eat Right 4 Your Metabolic Type
336 pages

[Dr. Cass Ingram](#)

Discover what an enormous impact your metabolic body type has on your overall health. Learn how to see the signs, know what is wrong, and take immediate action for to get healthy. A must for any library.



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COMING SOON

26. Upon information and belief, Defendants' book is sold and distributed, *inter alia*, through defendants' Internet website located at www.knowledgehousepublishers.com, through Amazon.com and other online and brick-and-mortar retailers.

27. Defendants' EAT RIGHT 4 YOUR METABOLIC TYPE designation and mark is closely and confusingly similar to Plaintiffs' EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks. The marks look and sound nearly identical and convey the same commercial impression.

28. Defendants' use of a mark confusingly similar to the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks in connection with similar goods is likely to cause confusion as to the source and origin of Defendants' products and services and is likely to cause confusion, or to cause mistake, or to deceive the public as to the source or sponsorship of Defendants' products and services and to mislead the public into believing that Defendants' products and services emanate from, are approved or sponsored by, or are in some way associated or connected with, Plaintiffs.

29. Defendants' infringing activity as described above dilutes the distinctive quality of the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks, and injures Plaintiffs' reputation as the source of high quality products and information in the field of alternative medicine.

30. Upon information and belief, Defendants' adoption and use of the infringing EAT RIGHT 4 YOUR METABOLIC TYPE trademark was and is willful and represents a deliberate attempt to trade unlawfully upon the goodwill associated with the EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks.

31. Defendants' activities as described herein are causing Plaintiffs immediate and irreparable harm and will continue to damage Plaintiffs unless enjoined by this Court.

COUNT I – INFRINGEMENT OF REGISTERED TRADEMARK

32. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs 1 through 31 above.
33. Defendant's activities as described above constitute infringement of Plaintiffs' federally registered EAT RIGHT 4 YOUR TYPE trademark in violation of Section 32(1) of the Lanham Act of 1946, as amended (15 U.S.C. § 1114(1)).

34. Plaintiffs have no adequate remedy at law.

COUNT II – FALSE DESIGNATION OF ORIGIN

35. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs 1 through 34 above.
36. Defendant's activities as described above constitute the use of false designations of origin in commerce, in violation of Section 43(a) of the Lanham Act of 1946, as amended (15 U.S.C. §1125(a)).
37. Plaintiffs have no adequate remedy at law.

COUNT III – FEDERAL TRADEMARK DILUTION

38. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs 1 through 37 above.
39. Plaintiffs' EAT RIGHT 4 YOUR TYPE trademark is distinctive and famous, and has enjoyed such distinction and fame since long before the time Defendants commenced use of the designation and mark EAT RIGHT 4 YOUR METABOLIC TYPE.
40. Defendants' activities as described above constitute dilution of the distinctive quality of the famous EAT RIGHT 4 YOUR TYPE trademark, in violation of Section 43(c) of the Lanham Act of 1946, as amended (15 U.S.C. § 1125(c)).

41. Plaintiffs have no adequate remedy at law.

COUNT V – COMMON LAW UNFAIR COMPETITION

42. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs 1 through 41 above.

43. Defendants' activities as described above constitute unfair competition under the common law of the State of New York.

44. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. That Defendants, their agents, servants, representatives, successors and assigns, and all those persons or entities in active concert or participation with any of them who receive actual notice of the injunctive order, be enjoined, preliminarily and permanently, from:

(a) Using the designation EAT RIGHT 4 YOUR METABOLIC TYPE or any other mark, term or title confusingly similar to Plaintiffs' EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks on goods or in connection with the provision of retail services or the sale of consumer goods;

(b) Using the designation EAT RIGHT 4 YOUR METABOLIC TYPE or any other mark, term or title confusingly similar to Plaintiffs' EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks in any domain name or Internet address; and

(c) Committing any other act calculated or likely to cause the public to believe that Defendants are in any manner connected, affiliated or associated with Plaintiffs or from otherwise competing unfairly with Plaintiffs.

2. Pursuant to 15 U.S.C. § 1118, that Defendants deliver to Plaintiffs for destruction all material (including, without limitation, all inventory, advertisements, promotional materials,

brochures, signs, displays, stationary, business cards and/or invoices), within their possession, custody or control, either directly or indirectly, that bear the designation EAT RIGHT 4 YOUR METABOLIC TYPE or any other mark, term or title confusingly similar to Plaintiffs' EAT RIGHT 4 YOUR TYPE and RIGHT 4 YOUR TYPE marks.

3. Pursuant to 15 U.S.C. § 1116(a), that Defendants be directed to file with the Court and serve upon Plaintiffs, within thirty (30) days after entry of final judgment, a report in writing and under oath setting forth in detail the manner and form by which they have complied with the provisions set forth in paragraphs 1 and 2 above.

4. Pursuant to 15 U.S.C. § 1117(a), that Defendants be directed to account to Plaintiffs for all gains, profits and advantages derived from Defendants' wrongful acts.

5. Pursuant to 15 U.S.C. § 1117(a), that Plaintiffs recover from Defendants the greater of three times the amount of Defendants' profits or any damages sustained by Plaintiffs, together with interest on such amount and the costs of this action.

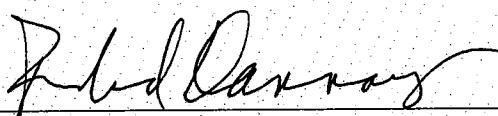
6. Pursuant to 15 U.S.C. § 1117(a), that Plaintiffs recover from Defendants their attorneys' fees and the costs of this civil action.

7. That Plaintiffs have such other and further relief as the Court deems equitable, just and proper.

Dated: New York, New York
February 26, 2009

COWAN, LIEBOWITZ & LATMAN, P.C.

By:


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